IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3352 OF 2006

Suresh Kalyanji Bhagat .. Applicant

Versus

State of Maharashtra & Ors. .. Respondents

Mr.A.H.H.Ponda for applicant

Mr.D.N.Salvi for respondent No.2

Mrs.M.H.Mhatre, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 14th September 2006.

P.C.

. The applicant is present in Court.

2. The applicant is aggrieved by the fact

that the trial court which is trying NDPS Special Case No.162 of 2001 has passed several orders because of the default on the part of the applicant in pending special case.

3. The submission of Mr.Ponda appearing for applicant is that the special case is pending. Therein the charges have been framed some time in the year 2004, but recording of evidence is yet to commence. The applicant has remained present all through out but for a brief period he could not attend the Court. The circumstances, which are pointed out in the present application, were brought to the notice of the trial court as well. His submission is that the applicant has been enlarged on bail by this Court in the special case. Application for cancellation thereof also has been rejected by this Court. In such circumstances, merely because the court was of the view that the applicant was not attending the trial on the dates fixed for the same, the court

ought not to have proceeded firstly to issue bailable warrant and thereafter a non bailable warrant and cancel the surety bond. In such state of affairs, the applicant was compelled to apply for bail before the trial court which application is also kept pending.

4. Mr.Salvi, learned Counsel appearing for respondent No.2 states that in the affidavit filed in this application, the respondent No.2 has pointed out as to how the applicant under the garb of permanent exemption from the court has not been attending the court and has remained absent. Ultimately, bailable warrant and proclaimation had to be issued so also distress warrant to the sureties. As a last resort, the learned Judge with a view to secure presence of applicant, proceeded to issue non bailable warrant and cancellation of surety bond. In these circumstances, this is not a fit case for this Court to exercise its inherent jurisdiction.

5. On the last occasion, I had directed Mr.Ponda that the applicant should remain present before me failing which this application would not be considered. As per his statement, the applicant is present in court today. It appears from the record that the applicant is enlarged on bail in special case. The applicant's bail was sought to be cancelled by the prosecution which attempt also failed. However, that does not mean that the applicant has a licence or liberty to remain absent. Applicant's submission that his Advocate was present and he could not have disputed the identity. Hence, this was enough for the Court to proceed, also does not in the present case, impress me. Once the court below has issued bailable warrants and even then the applicant's presence cannot be secured, the Court below had to proceed to issue non-bailable warrant and notice to sureties. Surely, applicant cannot justify his stand of remaining

absent. There may be cases pending in other courts against him, wherein he may be required to attend but that does not mean that the present special case wherein he has been exempted, according to him, that he should continue to remain absent.

6. Be that as it may, considerable judicial time has been wasted in firstly deciding to issue warrant and notices to sureties and thereafter proceeding to cancel surety bond, Issuing non bailable warrant and taking cognisance of Misc.Application for granting bail. In my view, interest of justice would be sub-served if the present application is disposed of by directing that the applicant should remain present before the trial court on 16th September 2006 on which date the trial court has placed the matter. The trial court to proceed with recording of evidence. Applicant has to file an undertaking in this Court during the course of 15th September

2006 specifically undertaking therein that he would remain present before the Trial Court on 16th September 2006 so also on all subsequent dates. unless exempted. Any default would entail such consequences as are permissible in law. In that event, neither the discretion exercised in favour of the applicant by this Court nor the effect being not given to the earlier orders of the sessions court would constitute any impediment.

7. Mr.Ponda leaves the aspect of bail amount to the Court. Mr.Salvi states that considering the conduct of the applicant in not attending the court, bail amount be enhanced with more stringent conditions. In my view ends of justice would be met if the bail amount is enhanced to Rs.1 lakh. Applicant has already deposited Rs.25,000/- and the balance Rs.75,000/- to be deposited by 18th September 2006. At the request of Mr.Ponda, time to furnish surety is granted

till 3rd October 2006. Applicant would be at liberty to give one or two sureties for the enhanced amount. Application disposed of.

(S.C.Dharmadhikari, J)